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In the High Court of Punjab & Haryana at Chandigarh.

Date of decision : 26.9.2006.

Bhalla Ram .... Petitioner.

vs

Sudesh Kumari and others .. Respondents.

Coram Hon'ble Ms. Justice Kiran Anand Lall.

Present: Mr.H.S.Bhullar,Advocate,for the petitioner.

Kiran Anand Lall, J.

Application for amendment of plaint, which has been disallowed by the trial court, was filed by the petitioner on a date of hearing which was fixed as the 'last opportunity' for his evidence.

The provision regarding amendment of pleadings is contained in Order VI Rule 17 CPC which states that, "*no application for amendment shall be allowed after the trial has commenced, unless the Court comes to the conclusion that in spite of due diligence, the party could not have raised the matter before the commencement of trial.*"

In the case in hand, the petitioner filed a suit, seeking mandatory injunction that the respondents should vacate, and hand over possession of the demised premises, a house, to him and also pay damages. By virtue of the proposed amendment, the petitioner wants to convert the suit for mandatory injunction, into a suit for declaration to the effect that the agreement to sell dated 7.4.1993 and the general power of attorney dated 29.7.1997 are bogus and fraudulent and so are the judgment and decree dated 14.10.1997 passed on their basis, and further,the subsequent sale-deed

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executed on the basis of that judgment and decree, in favour of defendant no.1 (respondent no.1-herein), is, consequently, liable to be set aside.

A perusal of the copy of written statement, placed on record by the petitioner, vide civil misc. no.19319/CII of 2006, shows that respondents no.1 and 2 (defendants no.1 and 2 in the suit) had relied upon the agreement to sell dated 7.4.1993 and the power of attorney executed by the petitioner in favour of Shri Sanjay Chauhan for entering into the agreement to sell on his behalf, with respondent no.1, from the very beginning. They had also relied upon the judgment and decree for specific performance passed in favour of respondent no.1 on 14.10.1997, and the sale-deed executed in her favour (respondent no.1) in execution of the decree, in the written statement, itself. The petitioner, thus, became aware of the specific pleas taken up by the respondents, in respect of the power of attorney, judgment and decree, and the sale deed, long back. Date of filing, however, does not appear on the copy of written statement, but it is mentioned in the impugned order that the suit was filed in the year 1997, whereas the application for amendment was filed by the petitioner on 4.10.2004, and that, too, on a date which had been granted by the court, as the last adjournment for his evidence. It is also mentioned in the impugned order, and not controverted by the learned counsel in the petition, that the relief sought to be claimed by the petitioner, by the proposed amendment, had become time barred by the time the application was filed.

A perusal of the above discussion clearly reveals that the approach of trial court in dismissing the application on the grounds that (i) the proposed amendment, if allowed, would change the nature of suit altogether, and (ii) that the documents, now, sought to be challenged by

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virtue of the proposed amendment, came to the knowledge of the petitioner, from the stand taken in the written statement, long ago, is correct.

Once the trial had commenced, the court could have allowed the proposed amendment, only if the facts and circumstances of the case indicated that inspite of due diligence the petitioner could not have raised the matter before the commencement of trial. But, as is clear from the above narration of facts, that was not the position in this case, as the matter in question had clearly come to his notice from a perusal of the written statement, which had been filed long back. So, the order passed by the trial court, does not suffer from any illegality or even impropriety, and as such, the same does not call for any interference.

Dismissed.

26.9.2006. (Kiran Anand Lall)
vs. Judge.